

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

ALLERGAN, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2:09-cv-97
	)	
SANDOZ INC.,	)	
	)	
Defendant.	)	
	)	
	)	
ALLERGAN, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2:09-cv-348
	)	
ALCON LABORATORIES, INC.,	)	
ALCON RESEARCH, LTD.,	)	
ALCON, INC. AND FALCON	)	
PHARMACEUTICALS, LTD.,	)	
	)	
Defendants.	)	

**STIPULATION AND [PROPOSED] ORDER TO MODIFY INJUNCTION**

WHEREAS, on or about August 25, 2011, this Court issued a Final Judgment and Injunction (D.I. 262) in the above-referenced matters, adjudging and ordering that, *inter alia*:

(1) Defendant Sandoz Inc.’s (“Sandoz”) proposed products as described in Abbreviated New Drug Application (ANDA) No. 91-087 infringed claims 1-9 of U.S. Patent No. 7,642,258 (“the ’258 Claims”);

(2) Defendants Alcon Laboratories Inc.'s, Alcon Research, Ltd.'s, Alcon, Inc.'s, and Falcon Pharmaceuticals, Ltd's (collectively, "Alcon") proposed products as described in ANDA No. 91-574 infringed the '258 Claims;

(3) that the effective date of approval of Sandoz's ANDA No. 91-087 and Alcon's ANDA No. 91-574 under § 505(j) of the Federal Food, Drug & Cosmetic Act (21 U.S.C. § 355(j)) for the drug products described therein shall not be a date earlier than the latest of the expiration dates of U.S. Patent Nos. 7,030,149 (the "'149 patent"), 7,320,976 ( the "'976 patent"), 7,323,463 (the "'463 patent") and the '258 patent, plus any exclusivities afforded under the statute; and

(4) that Sandoz and Alcon, including their officers, agents, servants employees, attorneys, and any other persons who are in active concert with Defendants who receive actual notice of the order, were enjoined from making, using, offering to sell, or selling the products described in ANDA Nos. 91-087 and 91-574 within the United States or importing the described products into the United States until after the latest of the expiration dates of the '149, '976, '463 and '258 patents, plus any exclusivities afforded under the statute.

WHEREAS, on March 9, 2015, Plaintiff filed suit against Sandoz alleging infringement of the '149, '976 and '258 patents, as well as U.S. Patent No. 8,748,425 (the "'425 patent") (C.A. No. 15-cv-00347-JRG).

WHEREAS, on or about October 12, 2016, Plaintiff indicated it would no longer assert infringement of any claim of the '258 patent and has granted Defendants a covenant not to sue

based on seeking approval of, making, using, offering to sell or selling the products described in ANDA Nos. 91-087 and 91-574.

IT IS HEREBY STIPULATED AND ORDERED that:

1. In view of Plaintiff's covenant not to sue, the '258 patent provides no basis for delaying the effective date of any approval of Sandoz's ANDA No. 91-087 and Alcon's ANDA No. 91-574 under §505(j) of the Federal Food, Drug & Cosmetic Act (21 U.S.C. §355(j)) for the drug products described therein;

2. In view of Plaintiff's covenant not to sue, the '258 patent provides no basis to prevent Sandoz, Alcon, or any of their officers, agents, servants, employees, attorneys, and other persons who are in active concert or participation with Sandoz or Alcon from making, using, offering to sell, or selling the products described in Sandoz's ANDA No. 91-087 and Alcon's ANDA No. 91-574 within the United States or importing the described products into the United States;

3. For avoidance of doubt, in view of the foregoing, paragraphs 2, 3, 7, 8, 11, and 12 of the Final Judgment and Injunction issued in the above-captioned case (D.I. 262) shall be modified to (i) remove any reference to the '258 patent, (ii) remove the '258 patent from forming any basis for enjoining the FDA from approving Sandoz's ANDA No. 91-087 and Alcon's ANDA No. 91-574, (iii) remove the '258 patent from forming any basis for enjoining Sandoz and Alcon from making, using, offering to sell, or selling the products described in Sandoz's ANDA No. 91-087 and Alcon's ANDA No. 91-574 within the United States or importing the described products into the United States.

4. This Stipulation and Order shall not be deemed as an admission that the Sandoz's or Alcon's ANDA Products infringe (or do not infringe) the '258 patent, nor shall it serve as an admission that the '258 patent is valid (or invalid) or enforceable (or unenforceable).

Respectfully submitted,

Dated: October 22, 2016

By: /s/ Susan Morrison Coletti

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*SANDOZ INC., ALCON LABORATORIES, INC.  
ALCON RESEARCH, LTD. and  
FALCON PHARMACEUTICALS, LTD.*

SO ORDERED this \_\_ day of \_\_\_\_\_, 2016

**CERTIFICATE OF CONFERENCE**

In compliance with Local Rule CV-7(h), I hereby certify that counsel for Plaintiff conferred with counsel for Defendants and this submission is a joint submission.

/s/ Susan Morrison Coletti  
Susan Morrison Coletti

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 22nd day of October, 2016.

/s/ Susan Morrison Coletti  
Susan Morrison Coletti